

EXHIBIT 1

1 James F. Basile (SBN 228965)
james.basile@kirkland.com
2 Elizabeth L. Deeley (SBN 230798)
elizabeth.deeley@kirkland.com
3 Adam L. Gray (SBN 262557)
adam.gray@kirkland.com
4 KIRKLAND & ELLIS LLP
555 California Street
5 San Francisco, California 94104
Telephone: (415) 439-1400
6 Facsimile: (415) 439-1500

7 Susan Marie Davies (*Admitted pro hac vice*)
susan.davies@kirkland.com
8 Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
9 Washington, D.C. 20005
Telephone: (202) 879-5000
10 Facsimile: (202) 879-5200

11 Attorneys for Defendant
12 FACEBOOK, INC.

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15
16 SAMBREEL HOLDINGS LLC; YONTOO LLC;
and THEME YOUR WORLD LLC,

17 Plaintiffs,

18 vs.

19 FACEBOOK, INC.,

20 Defendant.
21
22
23
24
25
26
27
28

CASE NO. 12-CV-00668-CAB-KSC

**SECOND DECLARATION OF JUD
HOFFMAN IN SUPPORT OF
DEFENDANT FACEBOOK, INC.'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Hon. Cathy Ann Bencivengo
Hearing Date: August 9, 2012
Hearing Time: 10:00 a.m.
Dept.: Courtroom 2

1 I, Jud Hoffman, declare:

2 1. I am the Global Policy Manager at Facebook, Inc. ("Facebook"). My primary
3 responsibilities at Facebook include setting and maintaining Facebook's terms and policies that
4 govern the relationships between and among Facebook, its users, its advertisers, and its Platform
5 developers. This includes setting Facebook's general content policies, advertising policies, and
6 Platform access policies. Except as otherwise noted, I have personal knowledge of the following
7 facts and if called to testify could and would testify competently thereto.

8 2. In his declaration, Matthew Adams discusses a product called "PageCraze," which he
9 describes as a "Facebook Application that operates on the Facebook Platform." I understand that
10 Sambreel claims PageCraze "operates in a fashion that is nearly indistinguishable from Facebook's
11 description of PageRage—except that it does not show advertising to its users" (Pls.' Reply in Supp.
12 of Mot. for Prelim. Inj. at 6), and suggests that Facebook nevertheless permits PageCraze to continue
13 operating. *See id.* Sambreel's contentions are misleading.

14 3. Sambreel's claim that PageCraze is a Facebook Application is false. PageCraze is not
15 a Facebook Application, but a browser add-on product operated by Webfetti and by Mindspark
16 Interactive Network, Inc. ("Mindspark"). I understand that Mindspark has implemented a Facebook
17 Connect integration to log into their product. This implementation would have been undertaken by
18 Mindspark itself without any approval from Facebook.

19 4. Beginning in late 2011, we instructed Mindspark to stop operating certain content
20 modification programs, including Webfetti and PageCraze. I had several communications with
21 Mindspark concerning its products after that. A true and correct copy of my email exchange with
22 Joey Levin, the Chief Executive Officer of Mindspark, is attached hereto as Exhibit A. In particular,
23 I advised Mindspark that plugins designed to interfere with the proper rendering of Facebook violate
24 Facebook's terms and policies, result in a poor user experience, and are disallowed whether
25 accompanied by a Facebook application or otherwise. *Id.* at 2. I also asked Mindspark to retire any
26 plugins that interfere with the proper rendering of Facebook. *Id.*

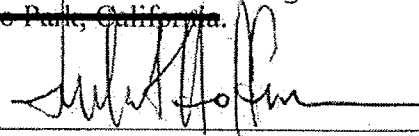
27 5. I was unaware that despite my request, Mindspark did not retire Webfetti or
28 PageCraze. I learned that Mindspark in fact continued to operate these products from Mr. Adams's

1 declaration. I contacted Mindspark again last week by email, explaining that its content
2 modification plugin violates Facebook's terms and policies, and once again asked Mindspark to stop
3 offering those products. *Id.* at 2.

4 6. Facebook believes that products that interfere with the proper rendering of
5 Facebook—products like PageRage and PageCraze—result in a poor user experience. Facebook has
6 repeatedly made clear that it does not intend to allow products of this kind to be implemented on
7 Facebook.

8 I declare under the penalty of perjury that the foregoing is true and correct to the best of my
9 knowledge.

10 Executed this 6th day of August 2012, at ~~Menlo Park, California~~ Grand Haven, Michigan

11 
12

13 Jud Hoffman
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

From: Jud Hoffman <judsonhoffman@fb.com>
Date: Fri, 3 Aug 2012 10:22:36 -0700
To: Timothy Allen <Timothy.Allen@mindspark.com>
Cc: Joey Levin <joey.levin@mindspark.com>, "Stein, Mark" <Mark.Stein@iac.com>, Brett Miller <bmm@fb.com>
Subject: Re: Mindspark

Thanks very much, Timothy.

Sent from my iPhone

On Aug 3, 2012, at 12:08 PM, "Timothy Allen" <Timothy.Allen@mindspark.com> wrote:

Hi Jud,

I wanted to write to confirm that the features of Webfetti that allow a user to customize their experience (content modification services) have been retired. Let us know if there are any further questions.

Best Regards,

Timothy Allen | Chief Product and Marketing Officer

T 914.826.2532 | F 914.591.2543 | E timothy.allen@mindspark.com

Mindspark Interactive Network, Inc. is an IAC company.

From: Joey Levin <joey.levin@mindspark.com>
Date: Wed, 1 Aug 2012 00:42:34 -0400
To: Jud Hoffman <judsonhoffman@fb.com>
Cc: "Stein, Mark" <Mark.Stein@iac.com>, Brett Miller <bmm@fb.com>, administrator <timothy.allen@mindspark.com>
Subject: RE: Mindspark

Hi Jud – yes, sounds like the dialogue on advertising is moving along. We appreciate all your help there. In the interest of moving things forward, we'll retire any features of Webfetti that allow a user to customize their experience (assume that's what you mean by content modification services). Webfetti as a brand/product has been around for a while with a wider set of features, but we'll retire all "content modification" features asap. Since SmileyCentral stopped a while ago, I don't believe we have any other similar features, but to the extent there's anything else, consider it done.

Thanks,
Joey

From: Jud Hoffman [<mailto:judsonhoffman@fb.com>]
Sent: Tuesday, July 31, 2012 7:57 PM
To: Joey Levin
Cc: Stein, Mark; Brett Miller
Subject: Re: Mindspark

Hi Joey,

I believe our teams have been talking about potentially re-engaging on advertising some of your new products that have a good WoT rating, but we've also noticed that Mindspark has not retired Webfetti and, in fact, is using a Connect integration with it. As I explained below in March, this service is not acceptable and violates Facebook's terms and policies.

Please advise by the end of the week whether Mindspark will voluntarily cease offering Webfetti and any other content modification services.

Thanks in advance,

Jud

From: Judson Hoffman <judsonhoffman@fb.com>
Date: Sunday, March 11, 2012 9:51 PM
To: Joey Levin <joey.levin@mindspark.com>
Cc: "Stein, Mark" <Mark.Stein@iac.com>, Christopher Palow <cpalow@fb.com>, Brett Miller <bmm@fb.com>
Subject: Re: Mindspark

Hi Joey,

As I mentioned below, we've been discussing our response to products that encourage people to customize elements of the Facebook experience. We remain convinced that those that interfere with the proper rendering of Facebook (including Webfetti, Smiley Central, SmileyCreator, etc.) result in a poor user experience and, as a result, we do not intend to discuss ways to allow different implementations of those products on Facebook, either via Platform or otherwise. We appreciate your efforts here but trust you can understand our position and that you will retire this feature set.

I also understand that you are frustrated with the WoT rating system, but we've taken a consistent approach with respect to our application of those ratings on Facebook. Some advertisers who had WoT ratings low enough to trigger rejection have worked with WoT and successfully improved their standing. While we don't consider a poor rating alone dispositive, we are uncomfortable accepting ads for products with particularly low feedback. If you believe you have products that aren't subject to those scores, we can consider them separately.

Thanks,

Jud

From: Joey Levin <joey.levin@mindspark.com>

Date: Thu, 1 Mar 2012 16:37:07 -0500

To: Judson Hoffman <judsonhoffman@fb.com>

Cc: "Stein, Mark" <Mark.Stein@iac.com>, Christopher Palow <cpalow@fb.com>, Brett Miller <bmm@fb.com>

Subject: RE: Mindspark

Thanks Jud. On WOT, it's an incredibly frustrating issue for us. The products themselves are not the problem. There is no adware, no spyware, or anything like that and your tech folks are encouraged to verify that down to the last byte. As it relates to toolbar services, our disclosures and approach are the highest in the industry (on par with Google and arguably better than the anti-spyware companies who monetize with toolbars such as AVG). What you find when you look into (and I recognize that you don't have a lot of time to do that) is that on a service like WOT we fall victim not to general informed user sentiment, but to coordinated effort of self-styled vigilantes who are either just regurgitating false claims from the past or working for our competitors. For example, most of the negative claims on WOT are actually made by people who don't even use the product and are open about the fact they are just reporting something they heard somewhere else. I understand that you need to rely on these services, but I would ask that you not consider them dispositive.

As it relates to the products mentioned below, understand you are still reviewing. We'd very much appreciate if, at a minimum, you could unblock mywebsearch.com, so that the users clicking on facebook links within our search results can reach facebook directly without the malicious site message.

We're available to discuss whenever you've completed your reviews. Thanks again for your time.

-Joey

From: Jud Hoffman [<mailto:judsonhoffman@fb.com>]

Sent: Tuesday, February 28, 2012 5:43 PM

To: Joey Levin

Cc: Stein, Mark; Christopher Palow; Brett Miller

Subject: Re: Mindspark

Adding Chris Palow (Site Integrity Engineering) and Brett Miller (Ad Policy)

Hi Joey,

Thanks for following up. I apologize for the delayed response, but there is still an ongoing discussion regarding our response to the products you mention below. I hope to have a better sense of our stance within the next week or so and will get back to you once I do.

As for allowing marketing back on the platform, I think we can talk about ways in which we would be more comfortable with the product and the advertising, but in the interest of full disclosure, you still face the obstacle of poor user feedback for those products and the brands (as reflected by Web of Trust, for example).

Let's plan to talk once in the next couple of weeks if that works for you.

Thanks,

Jud

From: Joey Levin <joey.levin@mindspark.com>

Date: Fri, 24 Feb 2012 20:03:22 -0500

To: Judson Hoffman <judsonhoffman@fb.com>

Cc: "Stein, Mark" <Mark.Stein@iac.com>

Subject: Re: Mindspark

Jud – Thanks for the call the other day. I appreciate the time you and your colleague spent with us. I looked back at the calendar invite and email chain and couldn't find his email address, so haven't copied him here. As discussed on the call, I wanted to follow up with the URL's to get them cleared: MyWebSearch.com, Smileycentral.com, and Smileycreator.com.

Separately, I know you said you'd consider allowing our marketing back on the platform, but that you had some thinking to do before reaching a conclusion. I appreciate your stance on the topic to date, and wonder whether you'd consider any of our toolbar products with a different approach on things like homepages or default search settings (e.g., opt-in as opposed to opt-out for homepage, changing the form of disclosure to work consistently with Platform, etc). Also, I'd love to explore a different business model altogether with respect to our emoticons business / facebook chat. For example, perhaps we could work without any toolbar or search attached, dependent entirely on Facebook credits, where we sell emoticon packages for FB chat via an app. We've made this model work in mobile. In either case, we continue to see a multiple eight figure opportunity to spend with you guys if we can find a way that satisfies all your concerns. Let us know if you think worth spending some time. Looking forward to continuing a dialogue.

Best,
Joey

From: Jud Hoffman [<mailto:judsonhoffman@fb.com>]

Sent: Thursday, January 26, 2012 01:20 PM

To: Joey Levin; Colin Stretch <stretchcs@fb.com>

Cc: Stein, Mark; Nicole Guerra <nicole@fb.com>

Subject: Re: Mindspark

Hi Joey,

Yes, I think we have. Adding Nicole to work on finding some time for us next week.

Thanks,

Jud

From: Joey Levin <joey.levin@mindspark.com>

Date: Mon, 23 Jan 2012 21:03:55 -0500

To: "stretchcs@fb.com" <stretchcs@fb.com>

Cc: "Stein, Mark" <Mark.Stein@iac.com>, Judson Hoffman <judsonhoffman@fb.com>

Subject: Re: Mindspark

Thanks Colin. Jud I think we may have spoken before. Is there a good time for you to speak this week or next?

From: Colin Stretch [<mailto:stretchcs@fb.com>]

Sent: Monday, January 23, 2012 07:59 PM

To: Joey Levin

Cc: Stein, Mark; Jud Hoffman <judsonhoffman@fb.com>

Subject: RE: Mindspark

Thanks Joey. You guys should connect with Jud Hoffman, cc'd here.